

CHAPTER 142
FORMERLY
HOUSE BILL NO. 183

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO CHILD DEATH REVIEWS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 320, Title 31 of the Delaware Code as follows:

§ 320 Declaration of legislative intent.

The General Assembly hereby declares that the health and safety of the children and pregnant women of the State will be safeguarded if deaths of children under the age of 18 and stillbirths occurring after at least 20 weeks of gestation and maternal death are reviewed, in order to provide its findings or recommendations to alleviate those practices or conditions which impact the mortality of children and pregnant women. This subchapter establishes the Child Death Review Commission. For the purposes of this subchapter, "Commission" means the Child Death Review Commission. Stillbirths occurring after at least 20 weeks of gestation do not include stillbirths which occur as a result of an elective medical procedure.

Section 2. Amend § 321, Title 31 of the Delaware Code as follows:

§ 321 Organization and composition.

(a) The following are members of the Commission: The State Attorney General, the Secretary of the State Department of Health and Social Services, the Secretary of the State Department of Services to Children, Youth and Their Families, the person appointed as the child advocate pursuant to § 9003A of Title 29, the Chair of the Child Protection Accountability Commission, the State Secretary of Education, the State Medical Examiner, the Director of the Division of Public Health, the Chief Judge of the Family Court, and the Superintendent of the Delaware State Police, or the designee of any of the preceding persons. Additionally, the following shall be appointed by the Governor as members of the Commission:

- (1) A representative of the Medical Society of Delaware specializing in each of pediatrics, neonatology, obstetrics, and perinatology.
- (2) A representative of the Delaware Nurses Association.
- (3) A representative of the National Association of Social Workers.
- (4) A representative of the Police Chiefs' Council of Delaware who is an active law-enforcement officer.
- (5) A representative of the New Castle County Police Department.
- (6) Two child advocates from state-wide nonprofit organizations.

A Chairperson of each regional child death review panel, each maternal death panel, and each Fetal and Infant Mortality Review Case Review Team established pursuant to subsections (d) and (e) of this section shall also serve as members of the Commission. The term of members appointed by the Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Commission. The members of the Commission, regional panels, Case Review Teams, and Community Action Teams shall serve without compensation. The

Commission shall be staffed, and its staff shall include an Executive Director. The Executive Director shall be hired and supervised by the executive committee of the Commission. The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Executive Director and the staff, and for the payment of actual expenses incurred by the Commission.

(b) The Commission shall, by affirmative vote of a majority of all members of the Commission, appoint a chairperson from its membership for a term of 1 year. The Commission shall meet at least semi-annually.

(c) Meetings of the Commission, regional panels, Case Review Teams, and Community Action Teams are closed to the public. The Commission shall meet at least annually with the Child Protection Accountability Commission to jointly discuss any findings or recommendations released to the public from reviews conducted under § 932 of Title 16, and this meeting is open to the public.

(d) The Commission shall by resolution passed by a majority of its members establish at least 1 but no more than 3 regional panels authorized to review child deaths. For good cause shown to the Commission, any panel may investigate and review any death or stillbirth entitled to review by the Commission. Members of the Commission shall appoint representatives to each regional panel such that the regional panel reflects the disciplines of the Commission. The members of such panel, together with any staff, contractors, or volunteers designated to assist the panel, are agents of the Commission under § 324 of this title. The Commission shall also appoint to each regional panel all of the following:

(1) A representative from each of the 3 police departments that investigate the majority of child deaths in the region covered by the panel.

(2) A citizen of the region interested in child death and stillbirth issues.

(e) The Commission shall by resolution passed by a majority of its members establish Fetal and Infant Mortality Review Case Review Teams and Community Action Teams based on the National Fetal and Infant Mortality Review Program model.

(f) Each regional panel and the Fetal and Infant Mortality Review Case Review Teams shall have the powers, duties, and authority of the Commission as delegated by the Commission. Each regional panel and Fetal and Infant Mortality Review Case Review Team shall, by affirmative vote of a majority of all members of that regional panel or team, appoint co-chairpersons from its membership for a term of 1 year.

(g) The Commission shall by resolution passed by a majority of its members establish 1 regional panel authorized to review maternal deaths.

Section 3. Amend § 322, Title 31 of the Delaware Code as follows:

Except as expressly provided in this subchapter, an affirmative vote of 60% of all members of the Commission, any regional panel, Case Review Team or Community Action Team is required to adopt any findings or recommendations of the Commission or such regional panel or team.

Section 4. Amend § 323, Title 31 of the Delaware Code as follows:

§ 323 Powers and duties.

(a) The Commission shall have the power to investigate and review the facts and circumstances of all deaths of children under the age of 18 solely for the purposes provided in § 320 of this title, except deaths of abused or neglected children which are within the jurisdiction of the Child Protection Accountability Commission under subchapter III, Chapter 9 of Title 16, all stillbirths, and all maternal deaths which occur in Delaware. The Commission may review deaths of abused or neglected children, for good cause shown, as determined by the agreement of the Commission and the Child Protection Accountability Commission. The Commission may delegate tasks to its committees, workgroups, and panels as necessary to accomplish its duties. The Commission shall delay the review of deaths involving criminal investigations until the completion of the prosecution. For purposes of this subsection, "completion of the prosecution" means the decision to file no information or seek no indictment, conviction or adjudication, acquittal, dismissal of an information or indictment by a court, the conditional dismissal under a program established by Delaware law or court program, or the nolle prosequi of an information or indictment by the Attorney General. The Commission shall make its findings or recommendations to the Governor and the General Assembly, at least annually, regarding those practices or conditions which impact the mortality of children and mothers. All summary information, findings, or recommendations released by the Commission under this subsection must comply with applicable state and federal confidentiality provisions, including those enumerated in § 324 of this title and § 9017(e) of Title 29. Notwithstanding any provision of this subchapter to the contrary, a summary information, finding, or recommendation released by the Commission under this subsection may not specifically identify any individual or any nongovernmental agency, organization, or entity.

(b) The Commission shall conduct child death reviews according to procedures promulgated by the Commission. The Commission shall conduct maternal death reviews which utilize a public health model and shall include information gathered through a clinical review and summary of medical and other subpoenaed records. The Commission may amend such procedures upon an affirmative vote of three-fourths of all members of the Commission.

(c) The Commission shall conduct fetal and infant mortality reviews and facilitate the implementation of recommendations based on the National Fetal and Infant Mortality Review Program model. Utilizing a public health model, the reviews must include information gathered through a clinical review and summary of medical and all other subpoenaed records, and maternal interviews. The Commission may amend such procedures upon an affirmative vote of three-fourths of all members of the Commission.

(d)(1) In connection with any review, the Commission, by and through its staff, a committee, or a panel, shall have the power and authority to do all of the following:

- a. Administer oaths.
- b. Issue subpoenas to compel the attendance of witnesses whose testimony is related to the death or stillbirth under review.
- c. Issue subpoenas to compel the production of records related to the death or stillbirth under review.

(2) A subpoena issued under paragraphs (d)(1)a. through c. of this section may be enforced or challenged only in the Family Court.

(3) All proceedings before the Family Court and all records of such proceedings conducted under paragraph (d)(2) of this section are private.

(4) In a proceeding under paragraph (d)(2) of this section, the Family Court may impose reasonable restrictions, conditions, or limitations on the access to proceedings and records of proceedings to preserve the confidentiality set forth in § 324 of this title.

(e), (f) [Repealed.]

(g) The Commission shall coordinate with the Child Protection Accountability Commission to receive statistics and other necessary information from the Child Protection Accountability Commission related to the Child Protection Accountability Commission's investigation and review of deaths of abused or neglected children.

(h) The Commission shall adopt rules or regulations for the administration of its duties or this chapter, as it deems necessary.

Section 5. Amend § 324, Title 31 of the Delaware Code as follows:

§ 324 Confidentiality of records and immunity from suit.

(a) The records of the Commission and of all committees, regional panels, Fetal and Infant Mortality Review Case Review Teams, and Community Action Teams, contractors, and volunteers, including original documents and documents produced in the review process with regard to the facts and circumstances of each death or stillbirth, are confidential and may not be released to any person except as expressly provided in subchapter II of this chapter. Such records must be used by the Commission, committees, and any regional panel or team, and its staff, contractors, and volunteers, only in the exercise of the proper function of the Commission, regional panel, or team and are not public records. Such records, together with the summary information, findings, and recommendations therefrom are not available for Court subpoena or subject to discovery, are not admissible into evidence or otherwise in any civil, criminal, administrative, or judicial proceeding, and are not considered binding under claim or issue preclusion doctrines. Except where constitutional provisions require otherwise, statements, records, or information are not subject to any statute or rule that would require those statements to be disclosed in the course of a civil, criminal, or administrative trial, or associated discovery. Aggregate statistical data compiled by the Commission, regional panels, or teams, however, may be released at the discretion of the Commission or regional panels.

(b) Members of the Commission, regional panels, Case Review Teams, and Community Action Teams, and their agents or employees, including committee members, contractors, and volunteers are not subject to, and are immune from, claims, suits, liability, damages, or any other recourse, civil or criminal, arising from or relating to any act, omission, proceeding, decision, determination, finding, or recommendation made in the performance of their duties under § 323 of this title, provided such persons acted in good faith and without malice in carrying out their responsibilities, authority, duties, powers, and privileges of the offices conferred by this law upon them or by any other provisions of the Delaware law, federal law, or regulations, or duly adopted rules and regulations of the

Commission or its regional panels or teams. Complainants bear the burden of proving malice or a lack of good faith to defeat the immunity provided by this subsection.

(c) A person in attendance at a meeting of the Commission, or any of its committees, regional panels, Case Review Teams, or Community Action Teams may not be required to testify as to what transpired at such meeting in any forum including any civil, criminal, administrative, or judicial proceeding. An organization, institution, or person furnishing information, data, reports, or records to the Commission or any regional panel or team with respect to any subject examined or treated by such organization, institution, or person, by reason of furnishing such information, is not liable in damages to any person or subject to any other recourse, civil or criminal.

Approved August 30, 2017